



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

JOHN STATE, DAVID WARRICK,
JAMES HARDIN, JERRY BRUNSON,
JARVIS JETER, KEVIN MICHEAL
ANDERSON, MAURICE BURGESS,
STAFFORD KEARSE, JUSTIN ROSE,
KEWAYNE LEE, CURTIS SCOTT,
ANTHONY GLENN, MATTHEW
FRANKS THOMAS, and CHRISTOPHER
MONTGOMERY,

Plaintiffs,

vs.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS, WARDEN WILLIE
EAGLETON, *individually and/or in his
official capacity as warden of Evans
Correctional Institution*, and ASSOCIATE
WARDEN ANNIE SELLERS, *individually
and/or in her official capacity as associate
warden of Evans Correctional Institution*,
MAJOR CHARLES WEST, SCDC
*Correctional Officer, individually and/or in
his official capacity as an employee of
SCDC*,

Defendants.

CIVIL ACTION 0:17-3326-MGL-PJG

§

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT**

Plaintiffs John State, David Warrick, James Hardin, Jerry Brunson, Jarvis Jeter, Kevin
Micheal Anderson, Maurice Burgess, Stafford Kears, Justin Rose, Kewayne Lee, Curtis Scott,

Anthony Glenn, Matthew Franks Thomas, and Christopher Montgomery filed this lawsuit against Defendants South Carolina Department of Corrections, Warden Willie Eagleton, individually and/or in his official capacity as warden of Evans Correctional Institution, and Associate Warden Annie Sellers, individually and/or in her official capacity as associate warden of Evans Correctional Institution, Major Charles West, SCDC Correctional Officer, individually and/or in his official capacity as an employee of SCDC, pursuant to 42 U.S.C. § 1983.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Defendants' motion to dismiss or, in the alternative, for summary judgment be granted in part and denied in part. Specifically, she recommends Defendants' motion be granted as to Plaintiffs Brunson, Burgess, State, Hardin, Rose, and Kearse. She further recommends the claims brought by Plaintiffs Jeter, Lee, Glenn, Thomas, Scott, Anderson, Warrick, and Montgomery should proceed at this time. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on January 25, 2019, but Plaintiffs Strickland failed to file any objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d

310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court this action is Defendants' motion to dismiss or, in the alternative, for summary judgment is **GRANTED IN PART AND DENIED IN PART**. Specifically, Defendants' motion is **GRANTED** as to Plaintiffs Brunson, Burgess, State, Hardin, Rose, and Kearse; and the motion is **DENIED** as to Plaintiffs Jeter, Lee, Glenn, Thomas, Scott, Anderson, Warrick, and Montgomery.

IT IS SO ORDERED.

Signed this 19th day of February, 2019, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE